IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 27, 2006 at Knoxville

STATE OF TENNESSEE v. JOYCE ELIZABETH CLEVELAND

Appeal from the Circuit Court for Marshall County
No. 16517 Robert Crigler, Judge

No. M2005-02783-CCA-R3-CD - Filed September 14, 2006

The defendant, Joyce Elizabeth Cleveland, appeals her Marshall County Circuit Court sentences for forgery and criminal impersonation, Class E felonies. She claims that the trial court erred in denying her a form of alternative sentencing and in imposing consecutive sentencing. Because the record supports the circuit court's judgments, we affirm.

Tenn. R. App. P. 3; Judgments of the Circuit Court are Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P. J., and ROBERT W. WEDEMEYER, JJ., joined.

Donna Leigh Hargrove, District Public Defender; and Andrew Jackson Dearing, III, Assistant District Public Defender, for the Appellant, Joyce Elizabeth Cleveland.

Paul G. Summers, Attorney General & Reporter; David H. Findley, Assistant Attorney General; William Michael McCown, District Attorney General; and Weakley E. Barnard, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The defendant pleaded guilty to offenses involving the December 2004 passing of two forged checks totaling approximately $1,900 in value. The guilty pleas were "open," and the defendant submitted the length and manner of service of her sentences to the trial court. The presentence report showed that the defendant's prior criminal record consisted of approximately 20 misdemeanor convictions. Testimony in the sentencing hearing showed that one of the defendant's prior suspended sentences had been revoked and that she was arrested for and convicted of misdemeanors while on bond for the charges pending in the present case. The trial court imposed Department of Correction sentences of one year and two months on each of two forgery and two criminal impersonation convictions. Through a combination of concurrent and consecutive alignment, the court ordered the effective one-year-two-month sentence relative to each forged check

to be served consecutively to each other, for an overall effective sentence of two years and four months.

The 28-year-old defendant's testimony in the sentencing hearing portrayed a life thus-far misspent. She began using alcohol and controlled substances at age 15 and dropped out of the ninth grade as a crack cocaine addict. Agreeing that she had only been employed for approximately a total of four weeks during her ten-year adult life, she supported her crack cocaine habit by prostitution and "stealing and robbing and lying and cheating." She admitted the accuracy of the presentence report's litany of prior misdemeanor convictions, including those of prostitution, possession of drug paraphernalia, trespass, criminal impersonation, and driving offenses. The defendant owed approximately $3,900 in accumulated fines and court costs.

Never married, she had a two-year-old daughter, and at the time of the sentencing hearing, she had been pregnant six months. She pleaded that her child not be born in jail and indicated that if she were released prior to the birth, she was "going to get on TennCare." The defendant testified that crack cocaine had ruined her life, that she desired to reform, and that she needed the help of a drug rehabilitation program.

Concerning the present offenses, the defendant testified that she was "high" and "broke" at a crack house when two men came in and persuaded her and another woman to pose as payroll employees for purposes of cashing the two payroll checks at a bank. The men promised drugs as payment and fulfilled the promise after the women successfully cashed the checks and gave the money to the men.

When a defendant challenges the length, range, or manner of service of a sentence, this court conducts a de novo review of the record with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d) (2003). This presumption, however, is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). The burden of showing that the sentence is improper is upon the appellant. *Id*. If the review reflects the trial court properly considered all relevant factors and its findings of fact are adequately supported by the record, this court must affirm the sentence, even if we would have preferred a different result. *State v. Fletcher*, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

In the event the record fails to demonstrate the required consideration by the trial court, appellate review of the sentence is purely de novo. *Ashby*, 823 S.W.2d at 169.

In making its sentencing determination in the present case, the trial court, at the conclusion of the sentencing hearing, was obliged to determine the range of sentence, the specific sentence, and the propriety of sentencing alternatives by considering (1) the evidence, if any, received at the trial and the sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct involved, (5) evidence and information offered by the parties on the enhancement

and mitigating factors, (6) any statements the defendant wishes to make in the defendant's behalf about sentencing, and (7) the potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-210(a), & -35-103(5) (2003); *State v. Holland*, 860 S.W.2d 53, 60 (Tenn. Crim. App. 1993).

The defendant, a Range I, standard offender, enjoyed the presumption of favorable candidacy for alternative sentencing for the offenses involved in this case. *See* Tenn. Code Ann. § 40-35-102(6) (2003). The record in this case, however, demonstrates that the presumption of favorable candidacy has been soundly rebutted by the defendant's history of repeated offending and her prior failure to successfully complete probation. *See id.* § 40-35-103(1) (2003) (providing that "sentences involving confinement should be based [upon specific factors, including that c]onfinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct . . . or . . . [m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant").

In the present case, the defendant's extensive history of offending overcomes the presumption of favorable candidacy for alternative sentencing. Thus, the denial of alternative sentencing is supported in the record.

The defendant also complains about the imposition of consecutive sentences. Consecutive sentences may be imposed in the discretion of the trial court only upon a determination that specified circumstances exist, including that the defendant "is a professional criminal who has knowingly devoted [her]self to criminal acts as a major source of livelihood" or that she is "an offender whose record of criminal activity is extensive." Tenn. Code Ann. § 40-35-115(b)(1), (2) (2003). The existence of a single category is sufficient to warrant consecutive sentencing. *State v. Adams*, 973 S.W.2d 224, 231 (Tenn. Crim. App. 1991). The trial court in this case based its decision to impose consecutive sentences upon both factors, and again, the record supports the determinations.

In passing, we note that the defendant apparently served 126 days in jail pending her sentencing in the present case. We further note that the trial court awarded 126 days' pretrial jail credit twice; it awarded 126 days' credit on *each* of the two forgeries that run consecutively. The effect of consecutive awards of the full amount of pretrial jail credit is to double the credit. We surmise that the trial court did this intentionally because the selected and somewhat irregular sentence length of one year and two months equates to a confinement period of 126 days when the 30-percent release eligibility factor for Range I offenders is applied. By applying the 126 days' credit to both stacked sentences, the defendant apparently qualified for release immediately following the sentencing hearing. We mention the phenomenon because doubling the pretrial jail credit is rather anomalous, and neither party mentioned the possible anomaly in its brief. At any rate, the state has not complained about the arrangement, and we have no reason to do anything other than acknowledge that it exists.

For the elucidated reasons, the judgments are affirmed.

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JAMES CURWOOD WITT, JR., JUDGE